

§ 2554.7

PROCEDURES LEADING TO ISSUANCE OF A COMPLAINT

§ 2554.7 Who investigates program fraud?

The Inspector General, or his designee, is the investigating official responsible for investigating allegations that a false claim or statement has been made. In this regard, the Inspector General has authority under the Program Fraud Civil Remedies Act and the Inspector General Act of 1978 (5 U.S.C. App. 3), as amended, to issue administrative subpoenas for the production of records and documents.

§ 2554.8 What happens if program fraud is suspected?

(a) If the investigating official concludes that an action under this Part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to a reviewing official. The reviewing official is the General Counsel or his or her designee. If the reviewing official determines that the report provides adequate evidence that a person submitted a false claim or statement, the reviewing official transmits to the Attorney General written notice of an intention to refer the matter for adjudication, with a request for approval of such referral. This notice will include the reviewing official's statements concerning:

- (1) The reasons for the referral;
 - (2) The claims or statements upon which liability would be based;
 - (3) The evidence that supports liability;
 - (4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;
 - (5) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and
 - (6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.
- (b) If at any time, the Attorney General or his or her designee requests in writing that this administrative proc-

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ess be stayed, the authority head, as identified in § 2554.9 of this Part, must stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 2554.9 Who is the Corporation's authority head?

The Corporation's "authority head" is the Chief Executive Officer or his or her designee. For purposes of this Part, the Corporation's Chief Financial Officer is designated to act on behalf of the Chief Executive Officer.

§ 2554.10 When will the Corporation issue a complaint?

The Corporation will issue a complaint:

- (a) If the Attorney General (or designee) approves the referral of the allegations for adjudication; and
- (b) In a case of submission of false claims, if the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed \$150,000. "A group of related claims submitted at the same time" includes only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted together as part of a single request, demand, or submission.

§ 2554.11 What is contained in a complaint?

- (a) A complaint is a written statement giving notice to the person alleged to be liable under 31 U.S.C. 3802 of the specific allegations being referred for adjudication and of the person's right to request a hearing with respect to those allegations. The person alleged to have made false statements or to have submitted false claims to the Corporation is referred to as the "defendant."
- (b) The reviewing official may join in a single complaint, false claims or statements that are unrelated, or that were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

(c) The complaint will state that the Corporation seeks to impose civil penalties, assessments, or both, against each defendant and will include:

(1) The allegations of liability against each defendant, including the statutory basis for liability, identification of the claims or statements involved, and the reasons liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which each defendant may be held liable;

(3) A statement that each defendant may request a hearing by filing an answer and may be represented by a representative;

(4) Instructions for filing such an answer;

(5) A warning that failure to file an answer within 30 days of service of the complaint will result in imposition of the maximum amount of penalties and assessments.

(d) The reviewing official must serve any complaint on the defendant and, if a hearing is requested by the defendant, provide a copy to the Administrative Law Judge (ALJ) assigned to the case.

§ 2554.12 How will the complaint be served?

(a) The complaint must be served on individual defendants directly, a partnership through a general partner, and on corporations or on unincorporated associations through an executive officer or a director, except that service also may be made on any person authorized by appointment or by law to receive process for the defendant.

(b) The complaint may be served either by:

(1) Registered or certified mail (return receipt requested) addressed to the defendant at his or her residence, usual dwelling place, principal office or place of business; or by

(2) Personal delivery by anyone 18 years of age or older.

(c) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

(d) Proof of service—

(1) When service is made by registered or certified mail, the return

postal receipt will serve as proof of service.

(2) When service is made by personal delivery, an affidavit of the individual serving the complaint, or written acknowledgment of receipt by the defendant or a representative, will serve as proof of service.

(e) When served with the complaint, the defendant also should be served with a copy of this Part 2554 and 31 U.S.C. 3801–3812.

PROCEDURES FOLLOWING SERVICE OF A COMPLAINT

§ 2554.13 How does a defendant respond to the complaint?

(a) A defendant may file an answer with the reviewing official within 30 days of service of the complaint. An answer will be considered a request for an oral hearing.

(b) In the answer, a defendant—

(1) Must admit or deny each of the allegations of liability contained in the complaint (a failure to deny an allegation is considered an admission);

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why he or she believes the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer which meets the requirements set forth in paragraph (b) of this section, the defendant may file with the reviewing official a general answer denying liability, requesting a hearing, and requesting an extension of time in which to file a complete answer. A general answer must be filed within 30 days of service of the complaint.

(d) If the defendant initially files a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(e) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. Such answer must be filed with the ALJ and a copy